

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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LORRAINE MORGANTI, individually and as Administratrix of the Estate  
of Rocco Morganti and on behalf of all heirs and next of kin of Rocco  
Morganti, deceased,

Plaintiff,

v.

02-CV-00735

LOCKHEED MARTIN CORPORATION,

Defendant,

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APPEARANCES:

OF COUNSEL:

Attorneys for Plaintiff:

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HOWARD G. MUNSON, SR. J.

**ORDER**

On January 24, 2003, defendant filed a motion for summary judgment in this matter

seeking a determination that decedent Rocco Morganti, at the time of his fatal accident, was not covered by the Longshore and Harbor Workers' Compensation Act, ("LHWCA"), 33 U.S.C. §§ 901-950, therefore, his survivors were not eligible to receive death benefits under this statute.

On March 28, 2003, plaintiff filed a cross motion requesting partial summary judgment on the issue of whether the decedent was a covered employee under the LHWCA based on the underlying material facts of the case. (This motion was received by the Court on June 9, 2002, but was considered filed as of March 28, 2003, pursuant to the CJRA reporting requirements instituted March 1, 2000. It is listed on the Docket at # 33).

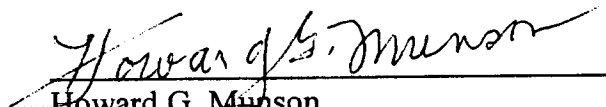
On February 17, 2004, while these two motions were awaiting consideration, the Benefits Review Board of the United States Department of Labor issued a decision reversing the findings of the Department of Labor Administrative Law Judge that the decedent was not covered by the LHWCA, thereby making the Estate of Rocco Morganti eligible to apply for death benefits under the statute.

Defendant appealed this opinion to the Second Circuit Court of Appeals pursuant to LHWCA, 33 U.S.C. § 921(c). On June 24, 2005, the Court of Appeals affirmed the decision of the Benefits review Board thereby dispelling any need for this court to consider neither defendant's nor plaintiff's pending motions.

Accordingly, defendant's summary judgment motion, and plaintiff's cross motion for partial summary judgment are **DENIED** as moot.

**IT IS SO ORDERED**

Dated: July 12, 2005  
Syracuse, New York

  
Howard G. Munson  
Senior U.S. District Judge